***

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3598 of 2005
Date of decision: 14.12.2007

Abinash Singh **...Appellant**

Versus

Jaswinder Singh **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. R.N. Moudgil, Advocate for the appellant

****

RAJESH BINDAL, J.

The defendant is in second appeal before this Court against the judgment and decree of the learned Lower Appellate Court whereby that of the trial Court was partly reversed. In a suit for specific performance filed by the respondent/plaintiff a decree only to the extent of refund of amount paid alongwith the interest @ 6% per annum passed.

The case set up by the respondent/plaintiff was that appellant/defendant approached him in February, 1996 for grant of loan of Rs. 1 lac for purchase of residential house. The respondent could grant him only Rs. 80,000/- as loan subject to payment of interest @ 2% per month. It is further averred that the appellant promised to pay back the loan on or before August 6, 1997 alongwith interest and in case of failure, he would be liable to execute the sale deed for the said house for the amount due alongwith interest thereon on or before October 15, 1998. On failure of the appellant to repay the loan and consequently not getting the sale deed registered in favour of the respondent, the suit was filed. The same was contested by the appellant raising the plea that the respondent is his distant relative and when in February, 1996 the appellant approached the respondent for getting a gas connection from Tolly Gas Agency, Anandpur Sahib, he got blank stamp papers signed from him. However, neither the

***

appellant was granted gas connection nor stamp papers were returned and it is these stamp papers, which have been misused by the respondent. The trial Court dismissed the suit filed by the respondent. However, learned Lower Appellate Court considering the fact that one of the attesting witnesses had deposed that sum of Rs. 80,000/- was paid by the respondent to the appellant in his presence at the time of signing of document, decreed the suit only to the extent of recovery of Rs. 80,000/- alongwith interest @ 6% per annum as against the claim of respondent to the extent of 2% per month.

Learned counsel for the appellant argued that the agreement to sell executed is a forged and fabricated document as the blank stamp papers signed by him for getting the gas connection were misused, which necessarily means the signature on the stamp papers are not denied by him. There is no explanation forthcoming as to why the appellant, who is not illiterate, signed the blank stamp papers allegedly for the purpose of release of gas connection when respondent admittedly was not having any gas agency and according to the appellant, it was only from a 3rd person that a gas connection was to be got issued. There is no material on record produced by the appellant to prove that in routine some stamp papers are required to be signed for getting a gas connection. The onus to substantiate the plea of fraud raised by the appellant was heavily on him which in the facts and circumstances of the present case, he has failed to discharge. On the other hand, attesting witness to the document has been produced, who categorically stated that amount was paid to the appellant in his presence at the time of signing of the document. Another argument raised by learned counsel for the appellant to the effect that it was a case for possession by way of specific performance and the same having not been believed, the suit should have been dismissed, also does not have any substance simply for the reason that it is the case of the respondent/plaintiff himself that appellant had raised a loan from him and the registration of sale deed was only in case of failure to return the loan.

With this material on record, I do not find any illegality has been committed by the learned Lower Appellate Court in decreeing the suit

***

of the respondent/plaintiff only to the extent of refund of amount paid by him.

No substantial question of law arises in the present appeal and the same is dismissed.

December 14 , 2007 **(Rajesh Bindal)**
Pka **Judge**